# MALAYSIAN REPORTS

## Karpal Singh v Inspector General of Police & Ors

SUPREME COURT (KUALA LUMPUR) – CRIMINAL APPEAL NO 52 OF 1988
ABDUL HAMID AG LP, HASHIM YEOP A SANI AND HARUN SCJJ
14 NOVEMBER AND 16 DECEMBER 1988

*Administrative Law – Habeas corpus – Detention order issued by Minister – Application for order of habeas corpus granted and appellant released – Appellant re-arrested on detention order issued by Minister – Appeal against order of release – Application for order of habeas corpus on second detention – Appeal against order of release on first detention allowed – Second detention order cancelled – Application for habeas corpus on second detention dismissed – Appeal – Internal Security Act 1960, ss 8(1), 73(1)& 81(3)*

*Preventive Detention – Application for writ of habeas corpus allowed – Appellant re-arrested on detention order – Appeal against release from first detention allowed – Second detention order cancelled – Application for habeas corpus on second detention order dismissed – Appeal – Internal Security Act 1960, ss 8, 73(1) & 81(3)*

In this case the appellant was first arrested on 27 October 1987 under s 73 of the Internal Security Act 1960. A detention order issued by the Ministry of Home Affairs was subsequently served on him. He applied for an order of habeas corpus and this was granted in the High Court (see [1988] 1 MLJ 468). Subsequently, the appellant was re-arrested and later served with a detention order issued by the Minister. The Public Prosecutor appealed against the order of the High Court releasing the appellant. The appellant applied for an order of habeas corpus in respect of his re-arrest and continued detention. The Supreme Court allowed the appeal against the order of the High Court in respect of the first detention order (see [1988] 3 MLJ 29) and the Minister of Home Affairs cancelled the second detention order. The High Court, after reserving judgment, dismissed the application for habeas corpus with regard to the second detention order. The appellant appealed.

**Held,** dismissing the appeal:
Since the second detention order had been cancelled and had ceased to exist, the application of the appellant was rightly dismissed.

**Legislation referred to**
Internal Security Act 1960 ss 8(1) 73(1), 81(3)

**Appeal from:** Perak Criminal Application No 54-7-88 (High Court, Ipoh)

Appellant in person.
*Abdul Hamid bin Mohamad* (Senior Federal Counsel) for the respondents.

*Cur Adv Vult*

**Harun SCJ** (delivering the judgment of the court): The appellant was first arrested on 27 October 1987 in Kuala Lumpur under s 73(1) of the Internal Security Act 1960 (ISA). On 19 December 1987, he was served with a detention order issued by the Minister of Home Affairs under s 8(1) of the ISA to be detained at Tempat Tahanan Perlindungan, Taiping for a period of two years commencing from 19 December 1987.

On 12 January 1988, the appellant applied for an order of habeas corpus in the High Court at Ipoh. On 9 March 1988, Peh J granted the application and the appellant was released. About nine hours later, he was re-arrested at Nibong Tebal, Pulau Pinang under s 73(1) of the ISA and subsequently served with a detention order issued by the Minister of Home Affairs under s 8(1) of the ISA to be detained at the Tempat Tahanan Perlindungan, Taiping for a period of two years commencing from 16 April 1988.

On 10 March 1988, the Public Prosecutor, on behalf of the respondents, appealed against the order of Peh J. On 17 March 1988, the appellant applied for an order of habeas corpus in the High Court at Ipoh on the grounds that his re-arrest and continued detention are unlawful. Abdul Malek J heard the application on 20 and 21 April 1988 and adjourned the matter to 27 July 1988.

By then, two events had intervened:
(a) this court on 19 July 1988 allowed the appeal by the Public Prosecutor against the order of Peh J in respect of the first detention order; and
(b) the Minister of Home Affairs on 26 July 1988 cancelled the second detention order of 16 April 1988 under s 81(3) of the ISA.

Abdul Malek J had in fact reserved judgment to 26 May 1988 and subsequently to June and July to await the decision of the appeal from Peh J. On 27 July 1988, he heard further evidence and argument and held that in view of the two events, he had no alternative but to dismiss the appellant's application for an order of habeas corpus. Hence this appeal.

In an application for an order of habeas corpus, it is true that the detaining authority has to show that the detention of the subject is lawful. In the present case, what was argued before Abdul Malek J and adjourned for judgment to 27 July 1988 was the validity of the second detention order. The validity of the first detention order had already been fully argued, considered and upheld by this court on 19 July 1988 and accordingly the matter should not be re-agitated again.

We are of the view that the interventions of:
(a) the release of the appellant following the decision of Peh J on 9 March 1988;
(b) the re-arrest of the appellant on 9 March 1988;
(c) the allegation of contempt of court by the re-arrest; and

(d) the issuance of the second detention order on 16 April 1988 and the contention that thereby the first detention order was revoked by implication;

did not in any way affect the validity of the first detention order.

The motion dated 17 March 1988 was based on the validity or otherwise of the second detention order. On 27 July 1988 since the second detention order had by then no longer existed, the motion of the appellant was therefore correctly dismissed by Abdul Malek J.

For the reasons we have stated, we would dismiss the appeal.

*Appeal dismissed.*

Solicitors: *Karpal Singh & Co.*

Reported by *Prof Ahmad Ibrahim*

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## Utusan Melayu (Malaysia) Berhad & Anor v Chan Tse Yuen

SUPREME COURT (KUALA LUMPUR) – CIVIL APPEAL NO 515 OF 1987
WAN SULEIMAN, MOHAMED AZMI AND WAN HAMZAH SCJJ
14 MAY AND 13 DECEMBER 1988

*Civil Procedure – Application for interim injunction – Locus standi – Application not dealt with on merits*

In this case the respondent had applied for an order of interim injunction to retrain the appellants from carrying on an essay contest in their Malay language newspaper, the *Utusan Malaysia*, on the subject 'To What Extent Are Non-Malay Citizens Loyal To This Country'. The essay contest had already been carried out and concluded by the time the application for interim injunction was heard. A preliminary objection was raised on the issue of the locus standi of the plaintiff-respondent to bring the action. After disposing of the objection in the plaintiff's favour, the learned judge went on to grant the interim injunction apparently without considering the application on the merits. The appellant appealed.

**Held** (Mohamed Azmi and Wan Hamzah SCJJ), allowing the appeal:

(1) The plaintiff's action was not a public interest litigation. This is supported by the fact that the only remedy sought by the plaintiff both in his originating summons and ex parte summons-in-chambers was for restraining orders. There was no application for any declaratory order.

(2) The plaintiff-respondent in this case had failed to identify any legal right sufficient to give rise to a justiciable cause of action either in his originating summons or in his application in support of his ex parte summons-in-chambers. Since the plaintiff failed to show that the defendants had committed any wrongful act by which his personal legal right had been infringed or was likely to be infringed, there was really nothing to be protected by the interlocutory injunction.

(3) In this case, the learned judge had granted the interim order without hearing argument on the merits. On this ground alone the order ought not to have been made.

(4) Since the parties were not heard on the substantive matter in the summons-in-chambers, the case would normally have to be remitted back to the learned judge to consider the application for interim injunction on the merits. However, it is obvious that in this case the plaintiff could not possibly identify any personal legal right justifying the application for injunctive remedy and as such, there is obviously no ground at all for granting an interim injunction. The order of the learned judge should therefore be set aside.

**Case referred to**

1 *American Cyanamid Co* v *Ethicon Ltd* [1975] AC 396 (refd)

**Appeal from:** Originating Summons No 57-31-1903-87 (High Court, Kuala Lumpur)

*Lim Chor Pee* (*Syed Hamid Albar* with him) for the appellant.

*N Chandran* (*VT Ravindran* and *G Naidu* with him) for the respondent.

*Cur Adv Vult*

**Mohamed Azmi SCJ** (delivering the judgment on behalf of Wan Hamzah SCJ and himself): This is an appeal against the decision of the High Court judge in Kuala Lumpur in granting the plaintiff an order of interim injunction dated 14 August 1987, which would have the effect of temporarily restraining the defendants from carrying on an essay contest in their Malay language newspaper (*Utusan Malaysia*) on the subject of 'To What Extent Are Non-Malay Citizens Loyal To This Country'. The contest was open only to non-Malay readers of the newspaper in the 'Views of the Non-Malays' column with winning prizes ranging from $20 to $200. The contest commenced on 18 April 1987 and it is common ground that by the time the plaintiff's application for interim injunction was heard on 2 July 1987, the essay contest was already carried out and concluded.

It is pertinent to observe that the plaintiff's action by originating summons dated 9 June 1987 contained prayers solely for injunctive remedy. On the basis of *American Cyanamid Co* v *Ethicon Ltd*,[1] it is a well-established principle that an interlocutory injunction is a discretionary relief. It is a form of judicial relief whereby the court orders a party to the proceedings either to refrain from doing specific acts or to do certain specified acts. It may be granted if it appears to the court to be just or convenient so to do in order to safeguard the position of one of the parties until his rights can finally be determined at the trial of the action. So long as there is a serious question to be tried, that is to say, so long as the plaintiff's claim is not frivolous or vexatious, the court should go on to consider whether the balance of conveni-